



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2012-0015]

Modification of the Uniform Chimney Variance to Include Industrial Access, Inc., and Marietta Silos LLC

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to modify the uniform chimney variance granted to Kiewit Power Constructors Co. and other employers by adding Industrial Access, Inc., and Marietta Silos LLC (Industrial Access and Marietta Silos) to the list of employers covered by the conditions specified in that variance.

DATES: This modification to the uniform chimney variance is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: Meilinger.francis2@dol.gov.

General and technical information: Contact Mr. David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3655, Washington, DC

20210; telephone: (202) 693-2110; email: johnson.david.w@dol.gov. OSHA's web page includes information about the Variance Program (see <http://www.osha.gov/dts/otpc/variances/index.html>).

SUPPLEMENTARY INFORMATION:

Copies of this Federal Register notice. Electronic copies of this Federal Register notice are available at <http://www.regulations.gov>. This Federal Register notice, as well as news releases and other relevant information, also are available at OSHA's webpage at <http://www.osha.gov>.

I. Background

Between 1973 and 2010, OSHA granted to a number of chimney-construction companies permanent variances from the provisions of the OSHA standards that regulate boatswains' chairs and hoist towers, specifically, paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.¹ On October 2, 2013, the Agency granted a permanent multi-state uniform chimney variance to 15 construction employers (Kiewit *et al*; 78 FR 60900). The uniform chimney variance: (1) clarified, improved, and updated the technology and safeguards included in the conditions of the variance by citing the most recent consensus standards and best practices; (2) broadened and standardized the scope of the uniform chimney variance to apply to chimney-related construction, including work on chimneys, chimney linings, stacks, silos, towers, and similar structures, built using jump-form and slip-form methods of construction, regardless of the structural configuration, and that involve the use

¹See 38 FR 8545 (April 3, 1973), 44 FR 51352 (August 31, 1979), 50 FR 20145 (May 14, 1985), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), 68 FR 52961 (September 8, 2003), 70 FR 72659 (December 6, 2005), 71 FR 10557 (March 1, 2006), 72 FR 6002 (February 8, 2007), 74 FR 34789 (July 17, 2009), 74 FR 41742 (August 18, 2009), and 75 FR 22424 (April 28, 2010).

of temporary personnel-hoist systems; (3) provided consistent and safe variance conditions across the employers applying for, and granted, the uniform chimney variance; and (4) superseded and replaced the chimney-related construction variances granted between 1973 and 2010.

II. Notice of Applications

On December 6, 2013, Industrial Access, Inc., and on February 7, 2014, Marietta Silos LLC, submitted their respective applications for a permanent variance under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11 (“Variances and other relief under section 6(d)”) (see Exhibits. OSHA-2012-0015-0023 and 0024). The applicants construct, renovate, repair, maintain, inspect, and demolish tall chimneys and similar structures made of concrete, brick, and steel. This work, which occurs throughout the United States, requires the applicants to transport employees and construction tools and materials to and from elevated worksites located inside and outside these structures. The applicants’ names and addresses are as follows:

Industrial Access, Inc.
1155 McFarland 400 Drive
Alpharetta, GA 30004

Marietta Silos LLC
2417 Waterford Road
Marietta, OH 45750

The applicants were seeking a permanent variance from 29 CFR 1926.452(o)(3), which regulates the tackle used to rig a boatswains’ chair, as well as from paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552, which regulate hoist towers. These paragraphs specify the following requirements:

- (o)(3) – Requirements for the tackle used to rig a boatswains’ chair;

- (c)(1) – Construction requirements for hoist towers outside a structure;
- (c)(2) – Construction requirements for hoist towers inside a structure;
- (c)(3) – Anchoring a hoist tower to a structure;
- (c)(4) – Hoistway doors or gates;
- (c)(8) – Electrically interlocking entrance doors or gates to the hoistway and cars;
- (c)(13) – Emergency stop switch located in the car;
- (c)(14)(i) – Using a minimum of two wire ropes for drum hoisting; and
- (c)(16) – Material and component requirements for construction of personnel hoists.

Instead of complying with these requirements, the applicants proposed to use the alternative conditions specified by OSHA for these requirements in the uniform chimney variance. The applicants contended that including them under the conditions of the uniform chimney variance would provide their employees with a place of employment that is at least as safe and healthful as these employees would receive under the existing provisions.

As is the case with the uniform chimney variance, the places of employment affected by the variance applications are the present and future projects where the applicants construct chimneys and chimney-related structures using jump-form and slip-form construction² techniques and procedures, regardless of structural configuration when such construction involves the use of temporary personnel hoist systems. The applicants' projects are in states under federal authority, as well as states that have safety and health

²Throughout this notice, OSHA uses the terms “jump-form construction” and “slip-form construction” instead of “jump-form formwork construction” and “slip-form formwork construction,” respectively.

plans approved by OSHA under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) and 29 CFR part 1952 ("Approved State Plans for Enforcement of State Standards"). The affected states cover private-sector employers and have standards identical to the standards that are the subject of these applications, and these states agree to the terms of the variance. (For further information, see the discussion of State-plan coverage for the uniform chimney variance at 78 FR 60900, 60901.)

The variance permits the applicants to operate temporary hoist systems in the manner prescribed by the uniform chimney variance. According to the conditions of the uniform chimney variance, the applicants can use these temporary hoist systems to raise and lower workers to and from elevated worksites. Examples of elevated worksites where temporary hoist systems can operate include: chimneys, chimney linings, stacks, silos, and chimney-related structures such as towers and similar structures constructed using jump-form and slip-form construction techniques and procedures regardless of the structural configuration of the structure (such as tapered or straight barreled of any diameter).

On April 18, 2014, OSHA published a Federal Register notice (79 FR 21956) in which it announced the proposed modification of the uniform chimney variance granted to Kiewit Power Constructors Co. and other employers to include Industrial Access, Inc., and Marietta Silos LLC and requested comments. OSHA received no comments or request for a hearing on the proposed modification of the uniform chimney variance. Therefore, with this action, OSHA is modifying the uniform chimney variance to include Industrial Access, Inc., and Marietta Silos LLC. Therefore, the applicants must comply with conditions that are consistent with the conditions used by the other employers listed in the

uniform chimney variance when operating temporary hoist systems in the construction of chimney-related structures.

III. Specific Conditions of the Variance Applications

As mentioned previously in this notice, OSHA granted a number of permanent variances since 1973 from the tackle requirements for boatswains' chairs in 29 CFR 1926.452(o)(3) and the requirements for hoist towers specified by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. In view of the OSHA's history, knowledge, and experience with the variances granted for chimney-related construction, OSHA finds that the variance applications submitted by Industrial Access and Marietta Silos are consistent with the uniform chimney variance previously granted to other employers in the construction industry. Therefore, OSHA determined that the alternative conditions specified by the applications protect the applicants' workers at least as effectively as the requirements of 29 CFR 1926.452(o)(3) and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.

IV. Final Decision and Order

Pursuant to the provisions of 29 CFR 1905.13 ("Modification, revocation, and renewal of rules or orders"), on April 18, 2014, OSHA notified the public in a Federal Register notice (79 FR 21956) that Industrial Access and Marietta Silos proposed to modify the uniform chimney variance granted previously by OSHA to Kiewit Power Constructors Co. and other employers (see 78 FR 60900). Therefore, with this notice, OSHA is adding the applicants to the list of employers granted authority by the Agency to apply the conditions specified in the uniform chimney variance when operating temporary hoist systems in the

construction of chimney-related structures (see 78 FR 60900). Section VI (“Order”) of the uniform chimney variance provides the alternate conditions with which Industrial Access and Marietta Silos must comply as part of OSHA’s grant of the modified uniform chimney variance.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 655, Secretary of Labor’s Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR part 1905.

Signed at Washington, DC, on July 9, 2014.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

BILLING CODE: 4510-26-P

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